

COURT UPHOLDS HYDE'S RIGHT

DECISION IN LORD SUIT SAYS STOCK CONTROLS EQUITABLE.

All Mutualization Plans Blocked and Even Liquidation Cannot Interfere, Declares Justice Madox—Alexander Lawyers to Appeal Immediately.

Justice Madox in the Supreme Court in Brooklyn yesterday handed down a decision granting the motion made on behalf of Franklin B. Lord, owner of thirty-six shares of the capital stock of the Equitable Life Assurance Society, to restrain the directors of the institution from carrying into effect the proposed mutualization plan.

Justice Madox's decision is regarded generally as a sweeping victory for the stock interests in the society, although President James W. Alexander's lawyers announced last night that they intended to appeal the case without delay.

Justice Madox not only sustains the contention of Mr. Lord's lawyers and of counsel for James H. Hyde as an intervenor in the suit that the proposed mutualization plan on the 28-24 directors basis violates the State and Federal constitutions, but he holds further that the clause in the charter of the society reserving the right to the board of directors to permit the holders of policies of \$5,000 and over to vote for the directors of the society is legally inoperative.

The effect of the decision, as admitted even by Alexander lawyers, is to render impossible, at least for the time being, any action by the directors, or stockholders even, unless every stockholder consents, or by the Legislature itself, which would affect the present rights of the stock to control the society. The decision apparently leaves Mr. Hyde more firmly entrenched in his control of the society than ever before.

The decision has demoralized the plans of the Frick investigating committee to recommend to the board of directors at the meeting next Wednesday a plan for the reorganization of the society which would contemplate the wiping out of the stock control and the establishment as the ruling body in the society of a board of trustees who would be individually responsible to the policyholders.

Mr. Hyde, it is known now, will listen to no proposition that has as one of its features the surrender by him of his stock ownership. The negotiations between the factions for a harmonious program based on such a plan were practically called off yesterday as soon as the decision became known. What recommendations for reorganization the Frick committee will make now cannot be conjectured.

The decision also has had a not less demoralizing effect on the Crimmins policyholders' committee. None of the members of that committee would venture last night to say what steps it would take, if any. Members of the committee had talked before the decision was rendered of appealing to Gov. Higgins to bring the matter before the Legislature at the coming special session, in the event of Justice Madox granting the injunction, but in view of the radical character of the decision that avenue also is regarded as closed for the present.

As the decision stands now, the only way it was said last night in which a mutualization can be effected would be with the consent of Mr. Hyde through his placing the majority of the stock in the hands of trustees with power to vote for some of the directors as might be designated by the policyholders, or a proxy committee to be appointed by them to vote for the remainder of the directors whom he might indicate.

Mr. Hyde is on record as having already made an offer to this effect, and it was said yesterday that he would undoubtedly stand by it. In his amended petition in the Lord suit he stated that if the court should determine that the right to vote for directors cannot be transferred to the policyholders in the manner proposed by the new charter, he would transfer the majority of the stock should be transferred for a term of years to trustees, with power to vote for twenty-eight directors as determined by the policyholders, and for the remaining twenty-four directors as designated by himself, "subject to the arrangement of details and conditions."

Nobody representing Mr. Hyde would say yesterday what these details and conditions were, but it was suggested by one man familiar with the situation that one condition would be that the majority of Alexander and Tarbell from the management of the society. It was said yesterday after the decision was made public that Mr. Hyde appreciates as well as any one else that it is necessary for the rehabilitation of the society and its future prosperity that the policyholders participate in the management of the society.

The Lord suit was begun about the middle of March. Mr. Hyde, represented by Samuel Untermyer, his chief counsel, intervened to contest the assertions made by counsel for the Equitable that the proposed amended charter had been adopted by the Equitable board of directors through the action of the board of directors. Mr. Hyde contended that the action of the board without his consent as a majority stockholder would be null and void. He disclaimed any intention of upholding the plaintiff in his suit for an injunction, asserting on the contrary that he desired to see the mutualization carried into effect. There were about ten other intervenors in the suit, including Charles W. Morse, who supported the plaintiff.

Justice Madox holds that the mutualization plan is contrary to the State and Federal constitutions on two independent grounds—first, that it violates the obligations imposed by contract between the stockholders and the company at the time the stock was issued in that it deprives him of his right to vote on all matters of importance, and second, that the right of the stock to control the corporation to the exclusion of every other interest is a vested right of property and that the mutualization plan with that right would violate the provisions of the Constitution that life, liberty and property shall not be taken without due process of law.

"The stockholders of the defendant company," says Justice Madox, "are members of the corporation, are the equitable owners of the corporate property and the right of a stockholder to vote upon his holdings of stock is a property right, one of the essential rights of ownership; hence the right of a stockholder to participate in the selection of those who are to be vested with the exercise of the corporate powers, the board of directors, is an attribute to his shares of stock, which has been defined as a right which its owner has in the management, profits, and ultimate assets of the corporation."

Justice Madox says that it is proposed under the new charter that the stockholders shall have the right to vote for and to elect but six-thirteenth in the number of the directors and that the percentage may be still further diminished by a vote of three-fifths of the stock.

"Thus," says Justice Madox, "the stockholder has lost the right to vote for all, and as well as the majority of the directors, and that would prevent him from exercising one of the essential rights of ownership."

Justice Madox calls attention to the fact that the opportunity for the absolute control by the policyholders is presented by the assumption that the policyholders' proxies might be controlled by persons whose interests and desires might be inimical to the rights and interests of the stockholders.

"Consider the possibility: There would be the policyholders' majority, twenty-eight to twenty-four, as the board is proposed to be constituted, with a section by that majority of a policyholder for president and the filling of the offices of the company with policyholders or persons not stockholders, and then callously answer the ques-

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Have the property rights of the stockholders been invaded or destroyed?

The right reserved in the old charter to permit by a three-fourths vote of the directors the policyholders of \$5,000 or over to vote in person for directors is held to be inoperative for the reason that at the time the charter was filed a life insurance company could be organized only as a stock company, and there was no power to include in the charter any right to policyholders to vote in any event. This decision by Justice Madox, it was said, would have absolutely no effect on the society's policy of doing business "on the mutual plan," as it has advertised for many years.

Justice Madox holds that the suggestion of counsel for Mr. Hyde and his cotrustee of the Hyde stock, William H. McIntyre, that the assent of the majority of the stockholders be sufficient to bind the minority stockholders even if no regular meeting was held for the purpose, is without merit.

In regard to the society's \$90,000,000 surplus Justice Madox says: "It is unnecessary on this motion to express any opinion as to the rights of either the policyholders or the stockholders to the surplus or any part thereof. Indeed, the policyholders are not before the court, none having intervened, and this question should wait the trial of the action, when if found necessary, the court may direct that they be brought in. Suffice here to say that plaintiff and the intervening defendant stockholders claim to be entitled to part and share in the surplus. Whatever right, if any, the stockholder may have to the surplus grows out of his being the owner of shares of the capital stock of the company, and must await final distribution, while here the policyholders' right depends upon the policy and its continuance and must be determined by the terms of that instrument."

The internal differences between some of the gentlemen most prominently concerned with the management of the company, Justice Madox says, have had no weight with the court on this motion. "The court has nothing to do," he says, "with the reasons or purposes actuating either those who have sought to bring about the contemplated change of charter, or those who now seek to restrain its effectuation. The intentions of all are presumed to be for the good of those interested, and it is for this court only to consider and finally determine the questions presented."

Justice Madox denied the motion of Mr. Alexander's lawyers that certain personal references to President Alexander in the Hyde papers be stricken out. "The motion," Justice Madox concludes, "is granted, but limited to the filing and effectuation of such proposed amended charter, for it appears that such contemplated amendment has been adopted and executed by the board of directors."

This means that the directors will restrain the board of directors from presenting the charter to the Attorney-General for his approval and from filing it in the State Superintendent of Insurance's office. The amended charter is now in the hands of the State Superintendent, whether it will be approved or not. Justice Madox also is regarded as closed for the present.

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BIG BOER WAR SHOW OPENS.

FOURTEEN ACRES OF WARRING ARMIES AND NOISE.

British and Boer Troops of All Kinds in the Mingle Fighting Great War Games for Gen. Cronje—Bachas and Other Mounted Sports—800 Men Take Part.

There was a preliminary performance of the Boer War sports at a Brighton Beach last night. Folks who went out to hear a whole lot of noise found what they wanted in plenty. There was lots of fine horsemanship, too, with drills of cavalry and artillery and races between riders of various nationalities and drivers of all manner of strange vehicles. There are 800 participants in the show, which is performed in an open arena four acres in extent in front of pavilions in which there are 10,000 seats.

The big field is surrounded by South African scenery. A number of low hills form the background. The detachments of soldiers enter from behind the mountains at the back and sides of this desert basin. A series of canvas curtains conceals the field from the spectators until the show is ready to begin and is run, followed by British and Boer troops have been summoned out to be introduced to the audience—there are Scottish Highlanders, Lancashire, artillery, Canadian cavalry, Boer cavalry and artillery, Basutos and an ambulance corps—were the races and an exhibition of fancy riding on a wonderfully trained coal black horse by F. E. Ellis, the director of the show.

The audience cheered the British and the Boer flags quite impartially, but the biggest cheering of the night was for Gen. Piet A. Cronje, who cantered across the sands in a rusty black suit, waving grimly as the people yelled for him. The races that made the most excitement were between English, Irish, Canadian, American and Boer riders. The Irishman had all the preliminary enthusiasm, and his green jacket was the most closely watched as the horses disappeared behind the scenery at the back of the enclosure. The racers came in without him. There was a lot of laughter over his failure to finish. It was learned later that he had been thrown and quite badly hurt on the back stretch, out of sight of the audience.

A part of the program which greatly pleased the audience was "The Mole of the Rose," a tournament between four riders who endeavored to snatch roses from one another's shoulders without losing their own. The roses were carried by every opponent for the display of quick and deft horsemanship and nerve and greatly excited the people in the grand stand.

It is needless to say that what everybody wanted to see was the series of battles. They went with a great rush. So to come cantering in and separated to spy out the field. The main column followed behind and wandered heedlessly near to the bridge over the Tugela River, which is part of the permanent scenery at the left of the field.

There came a scattering fire from the hills. The naval brigade began pounding away with its small guns. The barelegged Highlanders and the Boer troops were hidden under a pall of smoke, while machine guns droned and bigger guns roared. The ground with their explosions and rifles were cracking and popping the whole length of the arena. One by one the British men and horses fell. The Boer troops tend to be wounded are not the least interesting actors in the show and the battle of Colenso ended with the annihilation of the British.

Other scenes portrayed were the battle of Paardeberg and the surrender of Gen. Cronje, and De Wet's flight between two British blockades. The Boer troops were line, and a tableau of Boer and British paying their compliments to the United States flag.

The first regular performance will be given at three o'clock this afternoon. There will be shows every afternoon and every night, including Sundays. It is hoped that by to-night there will be more light shed on the scenes. Except where the gloom was relieved by searchlights, it was quite impossible to see what was going on except immediately in front of the arena.

Later in the season a whole midway of amusement ventures is to appear in the grounds on the lands of the Brighton Beach Improvement Company, of which W. A. Brady is president, and then the Brighton Beach and the island will enter into a competition with the older amusement parks at the West End.

ACCIDENTS AT THE BOER WAR.

Soft Footing Makes Sham Battles Dangerous for Horsemen.

Five of the performers in the new Boer War show at Brighton Beach were hurt in accidents last night. All of them, according to Mr. Ellis, the director, were hurt on the soft, rough surface of the field, which is all of it made ground, and for that reason very uncertain footing for horses.

In the Paardeberg battle scene British Trooper Barlow was thrown from his horse. While he was down he was run over by a gun carriage. He was injured internally. The surgeon at the Brighton War field hospital said that he was in bad condition and had him sent to the Kings County Hospital at once.

Gunner Hardman fell from the caisson of one of the British guns and broke his arm. Boer Trooper Garner was knocked off his horse in a cavalry charge, broke his arm and was knocked off his horse and did not recover consciousness until he had been an hour in the hospital.

British Trooper Stewart fell and broke his arm. The Irish trooper in the race of nations fell in the backstretch and concussion of the brain soft, he was taken to the Kings County Hospital.

No Presbyterian Federation.

DALLAS, Tex., May 26.—The sentiment of the General Assembly of the Southern Presbyterian Church on the question of union with the Northern Presbyterian Church is so uncertain that a real test of strength was not made in the assembly to-day at Fort Worth, although the matter was disposed of so far as this meeting is concerned. The assembly will present itself again next year at Greenville, S. C.

CLERK AND \$4,000 MISSING.

Confidential Man of Kenmore Hotel, Albany, Used Proprietor's Bank Account.

ALBANY, May 26.—Philip Reed, the confidential clerk of Robert P. Murphy, the proprietor of the New Kenmore Hotel, is missing, and so is between \$4,000 and \$5,000 of Mr. Murphy's money. Reed came here on Dunkirk two years ago, and for a while held a clerkship in the State Assembly. Then he became Mr. Murphy's confidential man and had charge of his bank account. He has been using this account as his own for some months past, and Mr. Murphy found it out only when the Albany Trust Company told Mr. Murphy \$100,000 which had been presented would reveal his account, while Mr. Murphy knew he should have a substantial balance.

An investigation developed the use of Mr. Murphy's account by Reed and Reed's disappearance from the city. It is supposed that Reed has \$1,000 of Mr. Murphy's money with him. Reed has been talking of visiting Seattle. Reed is only 21 years of age. From behind the Kenmore desk the latter part of April a black satchel said to contain \$5,000 worth of precious stones disappeared.

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BLACKBURN WON'T SPEAK.

Gives Two Reasons Why He Must Disappoint Grant Post.

United States Senator Joseph C. Blackburn of Kentucky has upset all the calculations of U. S. Grant Post 327, Grand Army of the Republic, which had made arrangements for the Senator to deliver the oration at the Grant Tomb on Memorial Day. Blackburn said that his decision was due to a pressure of political business, that he was a candidate for nomination as United States Senator and that it was necessary for him to remain on the ground and look after his fences. In the course of a letter which he sent to Post Commander Harry W. Knight of U. S. Grant Post the Senator wrote:

I cannot but recognize the force of the suggestion that the action of the Confederate Camp of New York in deciding not to join in the parade, although purporting to be present at the ceremonies at the tomb, which action was brought about by reason of the objection made by other posts than your own, tends to make the situation too delicate and doubtful to justify me in filling the engagement, and might, perhaps, subject me to criticism here at the hands of our organization because I did not conform to accord sufficient consideration to the course adopted by the Confederate Camp of your city.

But, for the reasons above stated, that I cannot claim to be a deserter to appear in the parade, as contemplated by the generosity of Grant Post, it was not perfectly clear that I had no other alternative, there would escape criticism if not censure.

BABY'S AWFUL ITCHING ECZEMA

Sores All Over Face and Body—Could Not Tell What She Looked Like—Unable to Sleep—Grew Worse Under Doctors.

CURED BY CUTICURA IN ONE MONTH

A grateful mother, in the following letter, tells of another of those marvelous cures by Cuticura: "When my baby was four months old her skin broke out with a humor. I took her to a doctor, who said it was eczema. He gave me medicine to give her, but she kept getting worse all the time. Her little face and body were so covered with sores and large scales you could not tell what she looked like. No child ever had a worse case. Her face was being eaten away, and even her finger nails fell off. Then it itched so she could not sleep, and for many weary nights we could get no rest. At last we got Cuticura Soap and Ointment, first bathing her in warm water with the Soap, and then spreading on the Ointment with soft cloths. I saw a change in a week. The sores began to heal, and she could sleep at night, and in one month she had not one sore on her face or body. Any mother having children with eczema or humors will find a friend in Cuticura Soap and Ointment. (Signed) Mrs. Mary Sanders, 709 Spring St., Camden, N. J., Aug. 14, 1904."

The foregoing statement justifies the oft-repeated assertion that Cuticura Soap and Ointment afford instant relief, and permit sleep for baby and rest for tired mothers, and points to a speedy, permanent, and economical cure, when all else fails, in the most torturing, disfiguring, itching, burning, bleeding, scaly, crusted, and pimply skin, and scalp humors.

Cuticura Soap, Ointment, and Pills are sold throughout the world. Cuticura, a Chem. Corp., Boston, Sole Props. Send for "How to Cure Baby Humors."

SHEEHAN-HEARST DEAL FAILS.

Greater New York Democracy Balks at City Ownership League.

John C. Sheehan's New York Democracy and William R. Hearst's Municipal Ownership League have fallen out, it was learned last night. When Hearst started his municipal ownership movement in the early part of the year he set out to get control of the old Greater New York Democracy. It was understood that he had succeeded, but at a meeting of the executive committee some days ago some of the members, including Mr. Sheehan, kicked over the traces.

Moreover, the statement was made last night by one of those at the meeting that Mr. Sheehan in an address to the committee said that he had been told by County Clerk Thomas L. Hamilton, who has himself been mentioned as the possible Republican candidate for Mayor, that Hamilton had been authorized by O'Dell to promise that if the New York Democracy would agree to put up a good independent candidate the selection would be endorsed by the Republican organization.

There seems to be no doubt that Mr. Sheehan did make this statement, but as both O'Dell and Hamilton are out of the country there was no chance last night of finding out what justification he had. What is probably the real explanation of the split is a desire on the part of the majority of the members of the executive committee of the New York Democracy to run to cover because of the belief that Mayor McClellan will not only be renominated, but will be reelected. A meeting of the committee is to be held next Thursday night, and it is understood that the committee will read out of the organization five members who are said still to insist on going over to the Hearst crowd.

TO BUY WATER FROM JERSEY.

Board of Estimate Takes Another Step Toward Supplying Richmond.

The Board of Estimate authorized yesterday an appropriation of \$1,000,000 for providing Richmond with a water distributing plant. This plan is to serve to the borough the water which the city has decided to purchase from the Hudson County Water Company of New Jersey.

The contract has been made despite the fact that the New Jersey Legislature at its last session passed a bill, which was signed by the Governor, prohibiting New Jersey water companies from selling water to another State. Counsel have advised the administration of this city and the Hudson County Water Company that the bill is unconstitutional.

Some comment has been occasioned by the action of Little Tim Sullivan, who is representing the Hudson County Water Company, in opposing the acceptance of the New Jersey company's offer, which was much lower than the prices quoted by the State Island water companies.

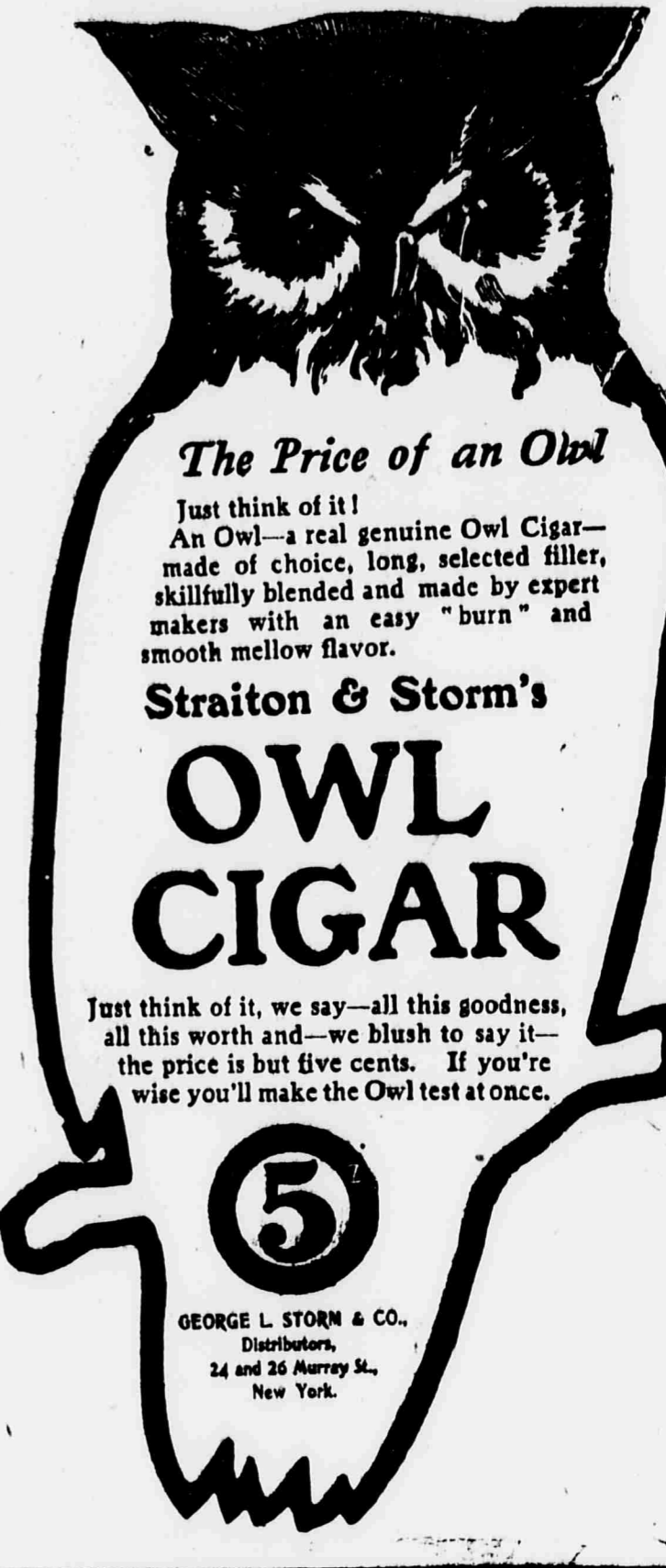
Should the Board of Aldermen refuse to concur in the contract and appropriation it is said that some very interesting news will develop. Mayor McClellan announced the appointment of a commission of five engineers to examine the properties of the State Island water companies with a view to their purchase by the city.

ARMY AND NAVY ORDERS.

WASHINGTON, May 26.—The following naval orders were issued to-day: Lieut. C. B. McVay, from command of the Her- cules to the Hartford. Lieut. J. M. Luby, to the Maryland. Assistant Paymaster E. M. Barber, from the Cincinnati to home and wait orders. Assistant Paymaster C. N. Wrenshall to navy yard, Admiral's Transit. Capt. H. C. Snyder, from the Oregon to the Cavite Station. Lieut. J. T. Follock, to the Ohio for duty on staff. Lieut. J. M. Luby, from the Ohio to the Cavite Station. Lieut. J. M. Luby, from the Ohio to the Cavite Station. Lieut. J. M. Luby, from the Ohio to the Cavite Station.

64,000 Jewel and Diamond Robbery. SYRACUSE, May 26.—Mrs. Margaret Sabine of the Yates Hotel, a widow 64 years old, was robbed of diamonds and jewels valued at over \$4,000, which were taken from her room at the hotel to-day while she was sleeping. The sum of \$50 in currency was also taken.

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BOYS' ATTIRE.

This day (Saturday), there will be offered at decidedly less than the regular prices:

Norfolk Suits of Blue Serge and Mixed Cheviot, in yoke and box plaited styles, having two pairs of knickerbocker trousers; sizes, 9 to 16 years, . . . \$6.00

Russian Blouse Suits of White Linen, and Plain and Striped Seersucker; sizes, 3 to 6 years, . . . \$1.75

Sailor Suits of White and Tan Linen, embroidered on shield and collar, and having bloomer trousers; sizes, 5 to 10 years, . . . \$2.50

Also a number of Reefers, Russian Blouse and Sailor Suits, of woolen fabrics, at attractive prices.

TAKT ON RATE REGULATION.

Says Plan is Not to Make a New Schedule Every Morning.

CINCINNATI, Ohio, May 26.—The Cincinnati Commercial Club to-night closed the two days' celebration of its twenty-fifth anniversary with a banquet at the Queen City Club. Secretary of War Taft spoke only about fifteen minutes, his topic being "Policy and Practice." He said that this country was now "pursuing the policy of protection but not following it in the Panama Canal." He said the simple regulations of the War Department in buying all supplies were being carried out there, purchasing where the prices were the lowest.

"This, the policy of every business man," he said, "is being carried out in regard to the canal in the absence of any instructions to the contrary from Congress." It has been suggested that the next joint meeting of the club be held in the city of Panama and touching on that point Mr. Taft said: "I hope you will, if you go there a year from now, see there Americans in charge who know how to do things. We must have railroad men do that work."

This led him to the question of railroad rates, a subject he said which "is being considered very earnestly just now by legislators and to some extent by the people and the railroads." He said the proposed remedial legislation had been greatly distorted and exaggerated in some quarters. It was "not proposed that the Government take up and adjust a new schedule of rates for the railroads every morning."

The suggested legislation was directed as much toward rebate and discrimination as against unreasonable rates.

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WOMEN'S FOOTWEAR.

(THIRD FLOOR.)

B. Altman & Co. ARE SHOWING THE ACCEPTED STYLES IN WOMEN'S FOOTWEAR ADAPTED FOR THE SUMMER SEASON, EMBRACING PUMPS, HALF-SHOES AND SLIPPERS OF BLACK AND RUSSSET LEATHERS, WHITE CANVAS AND BUCKSKIN.

MISSSES' AND CHILDREN'S SHOES.